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Physicians Care Alliance LLC d/b/a PCA Skin

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Physicians Care Alliance, LLC d/b/a PCA
Skin, an Arizona limited liability
company,

Plaintiff,

v.

All Day Beauty, LLC a Florida limited
liability company, Jaime Mesa, an
individual, both doing business as “All
Day Beauty LLC” on the website
www.walmart.com, and JOHN DOES 1-
10,

Defendants.

Case No. 2:18-cv-02602-BSB

**FIRST AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
OTHER RELIEF, FOR VIOLATION OF
15 USC § 1114; 15 USC § 1125(a); 15
USC § 1125(c); AND RELATED
CLAIMS**

(JURY TRIAL DEMANDED)

Plaintiff Physicians Care Alliance LLC d/b/a PCA Skin (“PCA Skin”) brings this
action against Defendant All Day Beauty LLC (“All Day Beauty”), Defendant Jaime Mesa
 (“Mesa”) (both doing business as “All Day Beauty LLC” on the website
www.walmart.com (“Walmart”)) and John Does 1-10 (“Doe Defendants”) (collectively,
 “Defendants”) for trademark infringement in violation of the Lanham Act, 15 U.S.C.

§ 1114; false advertising in violation of 15 U.S.C. § 1125(a)(1)(B); unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A); common law unfair competition; and tortious interference with contract. These claims arise from Defendants' misappropriation of PCA Skin's trademarks in connection with Defendants' unlawful and unauthorized sale of PCA Skin's products on the Internet, including the sale of materially different and non-genuine products bearing PCA Skin's trademarks that are not subject to and interfere with PCA Skin's quality controls. In support of its complaint, PCA Skin alleges as follows:

PARTIES

1. PCA Skin is a limited liability company, organized under the laws of the State of Arizona, with its principal place of business located in Scottsdale, Arizona.

2. All Day Beauty is a limited liability company, organized under the laws of the State of Florida, with its principal place of business at 2200 N. Commerce Parkway, Suite #200, Weston, Florida, 33326.

3. Mesa is an individual who, on information and belief, resides at 437 Lakeview Dr., Apt 204, Weston, Florida and may be served with process there or anywhere else he may be found.

4. The true names, involvement, and capacities, whether individual, corporate, associated or otherwise of Doe Defendants, are unknown to PCA Skin. Therefore, PCA Skin sues these defendants by a fictitious name. PCA Skin is informed and believes, and on that basis alleges, that each of the Doe Defendants is responsible in some manner for the events and occurrences referred to herein or otherwise interested in the outcome of the dispute. When the true names, involvement, and capacities of these parties are ascertained, PCA Skin will seek leave to amend this Complaint accordingly.

JURISDICTION

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338, and 28 U.S.C. § 1367. PCA Skin's federal claims are predicated on 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a) and (c), and its claims arising under the laws of the State of Arizona are substantially related to its federal claims such

1 that they form part of the same case or controversy under Article III of the United States
2 Constitution.

3 6. This Court has personal jurisdiction because Defendants have expressly
4 aimed tortious activities toward the State of Arizona and established sufficient minimum
5 contacts with Arizona by, among other things, advertising and selling infringing PCA Skin
6 products to consumers within Arizona through one or more highly interactive commercial
7 websites with the knowledge that PCA Skin is located in Arizona and is harmed in Arizona
8 as a result of Defendants' sales of infringing PCA Skin products to Arizona residents and
9 residents of other states. Defendants have known that PCA Skin is located in Arizona,
10 among other reasons, because they have received cease-and-desist letters from PCA Skin
11 and because the PCA Skin products they are selling identify PCA Skin as a company
12 located in Scottsdale, Arizona. PCA Skin's claims arise out of Defendants' sales of
13 infringing PCA Skin products to Arizona residents.

14 VENUE

15 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
16 because a substantial part of the events or omissions giving rise to the claims occurred
17 within this judicial district and because Defendants are subject to personal jurisdiction in
18 this district.

19 FACTUAL ALLEGATIONS 20 PCA Skin & Its Trademarks

21 8. PCA Skin develops skincare products and professional treatments that are
22 sold exclusively through PCA Skin's website and PCA Skin's network of authorized sellers
23 ("Authorized Sellers").

24 9. PCA Skin devotes a significant amount of time, energy, and resources toward
25 protecting the quality and value of its brand, products, name and reputation. By distributing
26 products exclusively through its website and its Authorized Sellers, PCA Skin is able to
27 ensure the safety, well-being, and satisfaction of consumers and maintain the integrity and
28

1 reputation of the PCA Skin brand. In the highly-competitive skincare market, quality is a
2 fundamental part of the consumer's decision to purchase a product.

3 10. PCA Skin was founded in 1990. Since that time, PCA Skin has been a
4 worldwide leader in skin health education and in providing high quality products.

5 11. To promote and protect the PCA Skin brand, PCA Skin has registered
6 numerous trademarks with the United States Patent and Trademark Office, including, but
7 not limited to, PCA SKIN® (U.S. Trademark Registration No. 3,415,304, 3,415,305,
8 3,406,253, 3,837,903, 2,865,758, and 2,863,801), CLINICALM® (U.S. Trademark
9 Registration No. 4,929,004), EYEXCELLENCE® (U.S. Trademark Registration No.
10 4,747,412), C-STRENGTH® (U.S. Trademark Registration No. 4,447,028), SENSI
11 PEEL® (U.S. Trademark Registration No. 2,571,997), PIGMENT BAR® (U.S.
12 Trademark Registration No. 4,014,975), IDEAL COMPLEX® (U.S. Trademark
13 Registration No. 4,942,890), and EXLINEA® (U.S. Trademark Registration No.
14 3,397,373) (collectively, the "PCA Skin Trademarks").

15 12. The registration for each of the PCA Skin Trademarks is valid, subsisting,
16 and in full force and effect.

17 13. PCA Skin actively uses, advertises, and markets all of the PCA Skin
18 Trademarks in commerce throughout the United States.

19 14. Customers recognize the PCA Skin Trademarks as being associated with
20 products at the leading edge of research, innovation, and quality in the skincare industry.

21 15. Because of the effectiveness of PCA Skin products and the longevity of use
22 of the PCA Skin name, consumers trust the PCA Skin name and PCA Skin products.

23 16. Due to the superior quality and exclusive distribution of PCA Skin products,
24 and because PCA Skin is recognized as the source of these high-quality products, the PCA
25 Skin Trademarks have substantial value.

PCA Skin Exercises Strict Quality Controls over the Production and Distribution of Its Products and Limits Its Return Policy to Products That are Subject to Its Quality Controls

17. PCA Skin exercises strict quality controls over the distribution of its products. PCA Skin's ability to implement these quality controls is essential to the integrity and safety of its products, as well as the value of its trademarks and other intellectual property.

18. PCA Skin maintains quality controls over its products by selling its products exclusively through its website and through Authorized Sellers. Apart from PCA Skin itself, only Authorized Sellers are permitted to sell PCA Skin products to end-user consumers. Authorized Sellers are also prohibited from selling products to any person that an Authorized Seller knows, or has reason to suspect, will resell the products.

19. All Authorized Sellers apply and follow numerous quality controls to ensure that only high quality products are sold to consumers. Among other things, Authorized Sellers inspect products for damage, defect, and evidence of tampering or other non-conformance. Authorized Sellers also inspect their inventory regularly for products that are expired or soon-to-be expired, and they do not sell to consumers any products that are expired, soon-to-be expired, damaged, tampered with, or otherwise of non-optimal quality.

20. Authorized Sellers also store PCA Skin products at room temperature and out of direct sunlight, and they do not relabel, alter, modify, tamper with, or repackage any PCA Skin products or product labels, packaging, or documentation.

21. PCA Skin also imposes limitations and requirements on Authorized Sellers that wish to sell PCA Skin products online. First, Authorized Sellers are not permitted to sell on any website without PCA Skin's written approval. If approval is granted, Authorized Sellers are prohibited from selling anonymously and must provide their name and full contact information, including name, address, and telephone number, on each website where they are approved to sell PCA Skin products.

22. As a result of these measures, PCA Skin has knowledge of every website where PCA Skin products are sold by Authorized Sellers. If PCA Skin identifies a problem

1 in the quality of products sold through any of these websites, PCA Skin can take action
2 with the Authorized Seller to correct the problem and, if necessary, cease selling products
3 to the Authorized Seller.

4 23. PCA Skin has a return policy (“Return Policy”) that allows consumers to
5 return products within four months of the date of purchase if a consumer is dissatisfied
6 with the quality of a product and has not improperly dispensed the product. PCA Skin
7 provides product credit equivalent to the value of products that are properly returned
8 through the Return Policy.

9 24. Only products that were purchased from PCA Skin or from Authorized
10 Sellers are eligible for the Return Policy, because products sold by other sellers are not
11 subject to PCA Skin’s quality controls and PCA Skin has no ability to ensure the quality
12 of products sold by non-Authorized Sellers. The Return Policy is also not available for
13 products sold by Authorized Sellers through unauthorized channels, such as unapproved
14 websites.

15 **Defendants’ Unauthorized Sale of PCA Skin Products on the Internet**

16 25. Because the unauthorized sale of PCA Skin products over the Internet
17 threatens the safety of consumers and the reputation and goodwill associated with the PCA
18 Skin Trademarks, PCA Skin polices the sales of its products online.

19 26. Through these efforts, PCA Skin discovered that products bearing the PCA
20 Skin Trademarks are being sold on Walmart through a storefront called “All Day Beauty
21 LLC.” PCA Skin has not approved any of its Authorized Sellers to sell on Walmart, much
22 less through a Walmart storefront called “All Day Beauty LLC.”

23 27. No address information is provided on the “All Day Beauty LLC” storefront.
24 As a result, PCA Skin was forced to conduct an investigation to determine the identities of
25 the individual(s) or entity(ies) that operate the storefront.

26 28. Through its investigation, PCA Skin identified All Day Beauty and Mesa as
27 operators of the “All Day Beauty LLC” storefront. PCA Skin identified All Day Beauty
28 after discovering that the “All Day Beauty LLC” storefront states within its “Tax Policy”

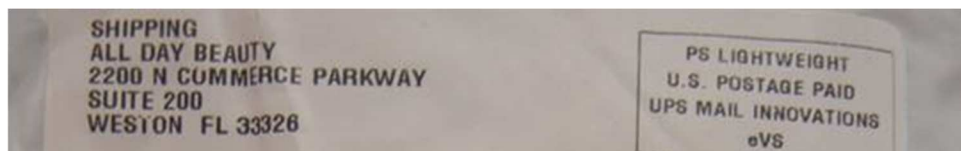
1 that it is “based in Florida.” PCA Skin then discovered that “All Day Beauty, LLC” is the
 2 name of a limited liability company registered in Florida. Additionally, Jaime Mesa is
 3 listed in public records as the manager of “All Day Beauty, LLC” and as sharing the same
 4 address as the mailing address for “All Day Beauty, LLC.”

5 29. Neither Mesa nor All Day Beauty are or have ever been Authorized Sellers.

6 30. On or about September 22, 2017, PCA Skin, through counsel, sent a cease
 7 and desist letter to All Day Beauty and Mesa demanding that that they stop selling PCA
 8 Skin products and remove all PCA Skin products from their Walmart storefront and all
 9 other unauthorized websites. PCA Skin did not receive any response to its letter, and
 10 products were not removed from the “All Day Beauty LLC” Walmart storefront.

11 31. On or about December 11, 2017, PCA Skin, through counsel, sent another
 12 letter to All Day Beauty and Mesa demanding that they stop selling PCA Skin products.
 13 This letter also enclosed a draft complaint. PCA Skin did not respond to its letter and
 14 products were not removed from the “All Day Beauty LLC” Walmart storefront.

15 32. In July 2018, PCA Skin purchased a product from the “All Day Beauty LLC”
 16 storefront. The package that was delivered included a return address of “2200 N
 17 COMMERCE PARKWAY, SUITE 200, WESTON FL 33326,” which is the address for
 18 All Day Beauty and Mesa:



23 33. As of the time of filing, Defendants continue to advertise and sell PCA Skin
 24 products through their “All Day Beauty LLC” storefront.

25 **Defendants’ Sales of PCA Skin Products are Illegal**

26 34. Defendants, without authorization from PCA Skin, have sold—and are
 27 currently selling—products bearing the PCA Skin Trademarks on Walmart.

28 35. The products Defendants are selling are not genuine PCA Skin products
 because they are not subject to PCA Skin’s quality controls and interfere with PCA Skin’s

1 ability to exercise quality controls over products bearing the PCA Skin Trademarks.
2 Because Defendants are not Authorized Sellers and sell anonymously on one or more
3 online marketplaces, PCA Skin has no ability to exercise its quality controls over the
4 products Defendants are selling. PCA Skin cannot audit Defendants to ensure they are
5 complying with PCA Skin's quality controls and/or cease providing products to
6 Defendants if they fail to abide by PCA Skin's quality controls.

7 36. The products Defendants are selling are also not genuine PCA Skin products
8 because they are not eligible for PCA Skin's Return Policy.

9 37. The Return Policy is a material element of genuine PCA Skin products.
10 Consumers considering whether to purchase PCA Skin products would find it relevant to
11 their purchasing decision to know whether the product they are purchasing is eligible for
12 the Return Policy. Consumers would also find it relevant whether a product was sold by
13 an Authorized Seller that is subject to PCA Skin's quality controls.

14 38. Accordingly, the products Defendants are selling are materially different
15 from genuine PCA Skin products.

16 39. Through their actions, Defendants are misleading and deceiving consumers
17 into believing they are purchasing genuine PCA Skin products when, in fact, they are not.

18 40. Defendants' disregard of PCA Skin's cease and desist letters and their
19 continued illegal sales of non-genuine products shows that Defendants are acting
20 intentionally, willfully, and maliciously.

21 41. Upon information and belief, Defendants, through their storefront on the
22 highly interactive Walmart marketplace website, accept and fulfill orders from Arizona
23 residents for products bearing the PCA Skin Trademarks and ship infringing products
24 bearing the PCA Skin Trademarks to persons located in Arizona through the regular course
25 of business.

**Defendants are Tortiously Interfering with PCA Skin’s Agreements
with Its Authorized Sellers**

42. As discussed, PCA Skin sells its products exclusively through its website and to Authorized Sellers.

43. PCA Skin has contracts with each of its Authorized Sellers that prohibit Authorized Sellers from selling PCA Skin products to third parties that Authorized Sellers know, or have reason to suspect, will resell the products. Authorized Sellers are permitted to sell PCA Skin products only to end-user consumers who will consume the products rather than resell them.

44. Authorized Sellers generally buy PCA Skin products in bulk from PCA Skin.

45. The Defendants have sold a very high volume of PCA Skin products through their “All Day Beauty LLC” Walmart storefront. PCA Skin has not itself sold any PCA Skin products to All Day Beauty or Mesa. Thus, the only way Defendants could have obtained the volume of PCA Skin products they have resold is by purchasing their products in bulk from one or more Authorized Sellers.

46. Accordingly, upon information and belief, Defendants purchased the PCA Skin products they resold on the Internet from one or more Authorized Sellers.

47. Defendants have known that PCA Skin’s contracts with its Authorized Sellers prohibit the sale of PCA Skin products to third parties—such as Defendants—for purposes of resale.

48. Defendants have known this, among other reasons, because PCA Skin informed All Day Beauty and Mesa in a cease and desist letter dated September 22, 2017 that its contracts with Authorized Sellers prohibit Authorized Sellers from selling PCA Skin products to third parties for purposes of resale. In its letter, PCA Skin also explained to All Day Beauty and Mesa that, every time they purchase PCA Skin products from an Authorized Seller and then resell the products, they have caused a breach of PCA Skin’s contract with the Authorized Seller that sold the products to All Day Beauty and Mesa.

1 49. In its September 22, 2017 letter, PCA Skin demanded that All Day Beauty
2 and Mesa permanently stop reselling PCA Skin products, stop purchasing PCA Skin
3 products for purposes of resale, and disclose the identities of all individuals and entities
4 that have sold PCA Skin products to All Day Beauty and Mesa. To date, Defendants have
5 not disclosed any of their sources of PCA Skin products.

6 50. As a result, PCA Skin does not currently know which specific seller(s) sold
7 the PCA Skin products to Defendants that Defendants have resold through their “All Day
8 Beauty LLC” storefront, and has no way to learn this information until it is able to take to
9 discovery in this action.

10 51. Based on the facts, however, that (A) PCA Skin sells its products exclusively
11 through its website and to Authorized Sellers, (B) PCA Skin has not sold any products to
12 All Day Beauty or Mesa, and (C) Defendants have sold a very high volume of PCA Skin
13 products through their “All Day Beauty LLC” storefront, it is plausible and a reasonable
14 inference that Defendants have purchased PCA Skin products they resold from one or more
15 Authorized Sellers. There is no other logical way that Defendants could have obtained the
16 quantity of PCA products that they have resold.

17 52. PCA Skin’s contracts with its Authorized Sellers are a specific class of
18 contract that Defendants caused Authorized Sellers to breach when they purchased PCA
19 Skin products from Authorized Sellers. PCA Skin has approximately 12,000 Authorized
20 Sellers.

21 53. Defendants have certainly not caused *every* Authorized Seller to breach its
22 contract with PCA Skin. Defendants did, however, cause the Authorized Sellers from
23 which Defendants purchased PCA Skin products to breach their contracts with PCA Skin.

24 54. Defendants know how they obtained the PCA Skin products they have resold
25 and they are in exclusive possession of that information until PCA Skin is able to take
26 discovery. Permitting PCA Skin to learn the identity(ies) of the Authorized Seller(s) that
27 sold products to Defendants through discovery does not produce any surprise or unfairness
28

1 to Defendants, who are on clear notice of the basis for PCA Skin's claim for tortious
2 interference with contract.

3 55. If PCA Skin learns through discovery that Defendants somehow did not
4 obtain any of the PCA Skin products they resold from any Authorized Seller, it will dismiss
5 its claim for tortious interference with contract.

6 **Mesa's Liability**

7 56. On information and belief, Defendant Mesa is in control of, a principal of,
8 and primarily responsible for Defendant All Day Beauty and its actions.

9 57. PCA Skin asserts claims against Mesa in both his individual capacity, as well
10 as his capacity as a corporate officer of All Day Beauty.

11 58. Until it conducts discovery, PCA Skin cannot determine whether Mesa in his
12 individual capacity, All Day Beauty, or both operate the "All Day Beauty LLC" storefront.

13 59. Alternatively, on information and belief, Mesa directs, controls, ratifies,
14 participates in, or is the moving force behind the sales of infringing PCA Skin products by
15 All Day Beauty. Accordingly, Mesa is personally liable for infringing activities of All Day
16 Beauty without regard to piercing the corporate veil.

17 60. Alternatively, on information and belief, All Day Beauty follows so few
18 corporate formalities and is so dominated by Mesa that it is merely an alter ego of Mesa.
19 Accordingly, PCA Skin is entitled to pierce the corporate veil of All Day Beauty and hold
20 Mesa personally liable for the infringing activities of All Day Beauty.

21 **PCA Skin Has Suffered Significant Harm as a Result of Defendants' Conduct**

22 61. PCA Skin has suffered and will continue to suffer significant monetary harm
23 as a result of Defendants' actions including, but not limited to, loss of sales, damage to
24 their intellectual property, and damage to their existing and potential business relations.

25 62. PCA Skin has suffered, and will continue to suffer, irreparable harm as a
26 result of Defendants' actions, including, but not limited to, irreparable harm to their
27 reputation, goodwill, business and customer relationships, intellectual property rights and
28 brand integrity.

1 63. PCA Skin is entitled to injunctive relief because, unless enjoined by this
2 Court, Defendants will continue to unlawfully sell PCA Skin products, causing continued
3 irreparable harm to PCA Skin's reputation, goodwill, relationships, intellectual property
4 and brand integrity.

5 64. Defendants' conduct was and is knowing, intentional, willful, malicious,
6 wanton and contrary to law.

7 65. Defendants' willful violations of the PCA Skin Trademarks and continued
8 pattern of misconduct demonstrate intent to harm PCA Skin.

9 **FIRST CAUSE OF ACTION**
10 **Trademark Infringement**
11 **15 U.S.C. § 1114**

12 66. PCA Skin re-alleges and incorporates the allegations set forth in the
13 foregoing paragraphs as if fully set forth herein.

14 67. PCA Skin is the owner of the PCA Skin Trademarks.

15 68. PCA Skin has registered the PCA Skin Trademarks with the United States
16 Patent and Trademark Office.

17 69. The PCA Skin Trademarks are valid and subsisting trademarks in full force
18 and effect.

19 70. Defendants willfully and knowingly used, and continue to use, the PCA Skin
20 Trademarks in commerce for purposes of selling PCA Skin products on the Internet without
21 PCA Skin's consent.

22 71. Defendants' use of the PCA Skin Trademarks in connection with the
23 unauthorized sale of products is likely to cause confusion, cause mistake, or deceive
24 because it suggests that the products offered for sale by Defendants are the same as the
25 products legitimately bearing the PCA Skin Trademarks and originate from or are
26 sponsored by, authorized by, or otherwise connected with PCA Skin when they are not.

27 72. Defendants' use of the PCA Skin Trademarks in connection with the sale of
28 PCA Skin products is likely to cause confusion, cause mistake, or deceive because it

1 suggests that the products Defendants offer for sale are genuine and authentic PCA Skin
2 products.

3 73. The products sold by Defendants are not, in fact, genuine and authentic PCA
4 Skin products. The products sold by Defendants are materially different because, among
5 other reasons, they are not subject to PCA Skin's quality controls, they interfere with PCA
6 Skin's ability to exercise quality controls, and they do not come with PCA Skin's Return
7 Policy.

8 74. Defendants' unauthorized use of the PCA Skin Trademarks has materially
9 damaged the value of the PCA Skin Trademarks, caused significant damage to PCA Skin's
10 business relations, and infringed on PCA Skin's trademarks.

11 75. As a proximate result of Defendants' actions, PCA Skin has suffered and will
12 continue to suffer damage to its business, goodwill, reputation, and profits in an amount to
13 be proven at trial.

14 76. PCA Skin is entitled to recover its damages caused by Defendants'
15 infringement of the PCA Skin Trademarks and to disgorge Defendants' profits from their
16 willfully infringing sales and unjust enrichment.

17 77. Pursuant to 15 U.S.C. § 1116, PCA Skin is entitled to injunctive relief
18 enjoining Defendants' infringing conduct.

19 78. Pursuant to 15 U.S.C. § 1117(a), PCA Skin is entitled to enhanced damages
20 and an award of attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **False Advertising**

23 **15 U.S.C. § 1125(a)(1)(B)**

24 79. PCA Skin re-alleges and incorporates the allegations set forth in the
25 foregoing paragraphs as if fully set forth herein.

26 80. PCA Skin is the owner of the PCA Skin Trademarks.

27 81. PCA Skin has registered the PCA Skin Trademarks with the United States
28 Patent and Trademark Office.

1 82. The PCA Skin Trademarks are valid and subsisting trademarks in full force
2 and effect.

3 83. Defendants willfully and knowingly used, and continue to use, the PCA Skin
4 Trademarks in interstate commerce, including through their product listings on Walmart,
5 for purposes of advertising, promoting, and selling products bearing the PCA Skin
6 Trademarks without PCA Skin's consent.

7 84. Defendants' advertisements and promotions of their products unlawfully
8 using the PCA Skin Trademarks have been disseminated to the relevant purchasing public.

9 85. Defendants' use of the PCA Skin Trademarks in connection with the
10 unauthorized advertising, promotion, and sale of Defendants' products misrepresents the
11 nature, characteristics, qualities, and origin of Defendants' products.

12 86. Defendants' use of the PCA Skin Trademarks in connection with the
13 unauthorized advertising, promotion, and sale of Defendants' products is likely to cause
14 confusion, cause mistake, or deceive because it suggests that the products Defendants offer
15 for sale are genuine and authentic PCA Skin products and originate from or are sponsored
16 by, authorized by, or otherwise connected with PCA Skin when they are not.

17 87. The products Defendants advertise, promote, and sell are not genuine PCA
18 Skin products because the products are not authorized for sale by PCA Skin, are not subject
19 to PCA Skin's quality controls, interfere with PCA Skin's quality controls, and are
20 materially different from genuine PCA Skin products.

21 88. Defendants' unauthorized and deceptive use of the PCA Skin Trademarks is
22 material and likely to influence customers to purchase the products Defendants sell,
23 because consumers are likely to believe that the products Defendants advertise using the
24 PCA Skin Trademarks are genuine PCA Skin products that are subject to PCA Skin's
25 quality control requirements and come with the other benefits associated with genuine PCA
26 Skin products when they do not.

27 89. Defendants' unauthorized use of the PCA Skin Trademarks in advertising,
28 and otherwise, infringes on the PCA Skin Trademarks.

1 90. As a proximate result of Defendants' actions, PCA Skin has suffered and will
2 continue to suffer damage to its business, goodwill, reputation, and profits in an amount to
3 be proven at trial.

4 91. PCA Skin is entitled to recover its damages caused by Defendants'
5 infringement of the PCA Skin Trademarks and to disgorge Defendants' profits from their
6 willfully infringing sales and unjust enrichment.

7 92. Pursuant to 15 U.S.C. § 1116, PCA Skin is entitled to injunctive relief
8 enjoining Defendants' infringing conduct.

9 93. Pursuant to 15 U.S.C. § 1117(a), PCA Skin is entitled to enhanced damages
10 and an award of attorneys' fees.

11 **THIRD CAUSE OF ACTION**
12 **Unfair Competition**
13 **15 U.S.C. § 1125(a)(1)(A)**

14 94. PCA Skin re-alleges and incorporates the allegations set forth in the
15 foregoing paragraphs as if fully set forth herein.

16 95. PCA Skin is the owner of the PCA Skin Trademarks.

17 96. PCA Skin has registered the PCA Skin Trademarks with the United States
18 Patent and Trademark Office.

19 97. The PCA Skin Trademarks are valid and subsisting trademarks in full force
20 and effect.

21 98. Defendants have willfully and knowingly used, and continue to use, the PCA
22 Skin Trademarks in interstate commerce for purposes of selling PCA Skin products without
23 the consent of PCA Skin.

24 99. Defendants' use of the PCA Skin Trademarks in connection with the
25 unauthorized sale and advertising of products is likely to cause confusion, cause mistake,
26 or deceive an appreciable number of ordinarily prudent purchasers as to the affiliation,
27 connection, association, sponsorship or approval of PCA Skin products because it suggests
28 that the products Defendants offer for sale originate from, or are sponsored, authorized, or
otherwise connected with PCA Skin when they are not.

1 100. The products sold by Defendants are not genuine and authentic PCA Skin
2 products. The products sold by Defendants are materially different because, among other
3 reasons, they are not subject to PCA Skin's quality controls, they interfere with PCA Skin's
4 ability to exercise quality controls, and they do not come with PCA Skin's Return Policy.

5 101. Defendants' unauthorized sale of products bearing the PCA Skin Trademarks
6 and unauthorized use of the PCA Skin Trademarks in advertising materially damages the
7 value of the PCA Skin Trademarks and causes significant damage to PCA Skin's business
8 relations.

9 102. Defendants' unauthorized sale of products bearing the PCA Skin Trademarks
10 and unauthorized use of the PCA Skin Trademarks in advertising infringes on the PCA
11 Skin Trademarks.

12 103. As a proximate result of Defendants' actions, PCA Skin has suffered and will
13 continue to suffer damage to its business, goodwill, reputation, and profits in an amount to
14 be proven at trial.

15 104. PCA Skin is entitled to recover its damages caused by Defendants'
16 infringement of the PCA Skin Trademarks and to disgorge Defendants' profits from their
17 willfully infringing sales and unjust enrichment.

18 105. Pursuant to 15 U.S.C. § 1116, PCA Skin is entitled to injunctive relief
19 enjoining Defendants' infringing conduct.

20 106. Pursuant to 15 U.S.C. § 1117(a), PCA Skin is entitled to enhanced damages
21 and an award of attorneys' fees.

22 **FOURTH CAUSE OF ACTION**
23 **Common Law Unfair Competition**

24 107. PCA Skin re-alleges and incorporates the allegations set forth in the
25 foregoing paragraphs as if fully set forth herein.

26 108. PCA Skin is the owner of the PCA Skin Trademarks.

27 109. PCA Skin has registered the PCA Skin Trademarks with the United States
28 Patent and Trademark Office.

1 110. The PCA Skin Trademarks are valid and subsisting trademarks in full force
2 and effect.

3 111. Defendants willfully and knowingly used, and continue to use, the PCA Skin
4 Trademarks in commerce for purposes of selling PCA Skin products on the Internet without
5 PCA Skin's consent.

6 112. Defendants' use of the PCA Skin Trademarks in connection with the
7 unauthorized sale of products is likely to cause confusion, cause mistake, or deceive
8 because it suggests that the products offered for sale by Defendants are the same as the
9 products legitimately bearing the PCA Skin Trademarks and originate from or are
10 sponsored by, authorized by, or otherwise connected with PCA Skin when they are not.

11 113. Defendants' use of the PCA Skin Trademarks in connection with the sale of
12 PCA Skin products is likely to cause confusion, cause mistake, or deceive because it
13 suggests that the products Defendants offer for sale are genuine and authentic PCA Skin
14 products.

15 114. The products sold by Defendants are not, in fact, genuine and authentic PCA
16 Skin products. The products sold by Defendants are materially different because, among
17 other reasons, they are not subject to PCA Skin's quality controls, they interfere with PCA
18 Skin's ability to exercise quality controls, and they do not come with PCA Skin's Return
19 Policy.

20 115. Defendants' unauthorized use of the PCA Skin Trademarks has materially
21 damaged the value of the PCA Skin Trademarks, caused significant damage to PCA Skin's
22 business relations, and infringed on PCA Skin's trademarks.

23 116. As a proximate result of Defendants' actions, PCA Skin has suffered and will
24 continue to suffer damage to its business, goodwill, reputation, and profits in an amount to
25 be proven at trial.

26 117. PCA Skin is also entitled to punitive damages because Defendants have acted
27 with such a conscious and deliberate disregard of the interests of others that their conduct
28 may be called willful or wanton.

FIFTH CAUSE OF ACTION
Tortious Interference with Contract

118. PCA Skin re-alleges and incorporates the allegations set forth in the foregoing paragraphs as if fully set forth herein.

119. PCA Skin sells its products exclusively through its website and to Authorized Sellers.

120. PCA Skin has entered into contracts with each of its Authorized Sellers. These agreements prohibit Authorized Sellers from selling PCA Skin products to third parties, such as Defendants, that Authorized Sellers know, or have reason to suspect, will resell the products. Authorized Sellers are permitted to sell PCA Skin products only to end-user consumers who will consume the products rather than resell them.

121. Authorized Sellers generally buy PCA Skin products in bulk from PCA Skin.

122. The Defendants have sold a very high volume of PCA Skin products through their “All Day Beauty LLC” Walmart storefront.

123. PCA Skin has not itself sold any PCA Skin products to All Day Beauty or Mesa.

124. Based on these facts, it is plausible and a reasonable inference that Defendants have purchased PCA Skin products they resold from one or more Authorized Sellers. There is no other logical way that Defendants could have obtained the quantity of PCA products that they have resold.

125. Defendants have known that PCA Skin’s agreements with its Authorized Sellers prohibit Authorized Sellers from selling PCA Skin products to third parties, such as Defendants, for purposes of resale.

126. Defendants have known this, among other reasons, because PCA Skin informed All Day Beauty and Mesa in a cease and desist letter dated September 22, 2017 that its contracts with its Authorized Sellers prohibit Authorized Sellers from selling PCA Skin products to third parties who intend to resell them. In its letter, PCA Skin also explained to All Day Beauty and Mesa that, every time they purchase PCA Skin products

1 from an Authorized Seller and then resell the products, they have caused a breach of PCA
2 Skin's contract with the Authorized Seller that sold the products to All Day Beauty and
3 Mesa.

4 127. Defendants have willfully, intentionally, and knowingly interfered with the
5 agreements between PCA Skin and its Authorized Sellers by purchasing PCA Skin
6 products from Authorized Sellers for the purpose of reselling them on the Internet.

7 128. Defendants' actions were intended to, and did, disrupt PCA Skin's
8 contractual and business relationships with its Authorized Sellers.

9 129. Defendants have acted with a wrongful purpose by inducing Authorized
10 Sellers to breach their contractual agreements with PCA Skin by selling PCA Skin products
11 to Defendants that Defendants intended to, and did, resell on the Internet without PCA
12 Skin's approval.

13 130. Defendants have no legal right, privilege, or justification for their conduct.

14 131. PCA Skin's contracts with its Authorized Sellers are a specific class of
15 contract that Defendants caused Authorized Sellers to breach when they purchased PCA
16 Skin products from Authorized Sellers. PCA Skin has approximately 12,000 Authorized
17 Sellers.

18 132. Defendants have certainly not caused every Authorized Seller to breach its
19 contract with PCA Skin. Defendants did, however, cause the Authorized Sellers from
20 which Defendants purchased PCA Skin products to breach their contracts with PCA Skin.
21 Because Defendants have refused to disclose how they have obtained the PCA Skin
22 products they have resold, PCA Skin can learn the specific identities of the Authorized
23 Seller(s) that sold products to Defendants only by taking discovery in this action.

24 133. Defendants' actions have caused injury to PCA Skin for which PCA Skin is
25 entitled to compensatory damages in an amount to be proven at trial.

26 134. As a proximate result of Defendants' actions, PCA Skin has suffered damage
27 including loss of sales and damage to its existing business relations.
28

- ## JURY DEMAND

RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

By: s/ Gregory Collins

*Attorneys for Plaintiff Physicians Care Alliance LLC
d/b/a PCA Skin*